



Control Number: 51415



Item Number: 618

Addendum StartPage: 0

PUC DOCKET NO. 51415
SOAH DOCKET NO. 473-21-0538

RECEIVED

APPLICATION OF §
SOUTHWESTERN ELECTRIC §
POWER COMPANY FOR §
AUTHORITY TO CHANGE RATES §

PUBLIC UTILITY
COMMISSION OF TEXAS

EAST TEXAS SALT WATER DISPOSAL COMPANY'S INITIAL BRIEF

V.	Billing Determinants [PO Issue 4, 5, 6, 54]	2
	A. Because COVID-19 Has Materially Altered Electricity Consumption By and Among Customer Classes, SWEPCO Should Be Required to Update Its Billing Determinants Before Any New Rates are Imposed on Consumers.....	2
	B. Representations That the “Work from Home” Economy Will Cease and Will Entirely Revert to Pre-COVID Behavior Lack Evidence and are Wholly Contradicted by SWEPCO’s Own Data.	4
VI.	Functionalization and Cost Allocation [PO Issues 4, 5, 52, 53, 55, 56, 57, 58]	7
	A. Jurisdictional Allocation [PO Issues 55, 57].....	7
	B. Class Allocation [PO Issues 53, 58]	8
VII.	Revenue Distribution and Rate Design [PO Issues 4, 5, 47, 48, 52, 59, 60, 61, 62, 75, 76, 77, 78, 79]	8
	A. Rate Moderation / Gradualism [PO Issue 52].....	8
	B. Rate Design and Tariff Changes [PO Issues 60, 61, 62]	10
	C. Transmission Rate for Retail Behind-the-Meter Generation	10
XI.	Conclusion	11

**PUC DOCKET NO. 51415
SOAH DOCKET NO. 473-21-0538**

APPLICATION OF	§	PUBLIC UTILITY
SOUTHWESTERN ELECTRIC	§	
POWER COMPANY FOR	§	COMMISSION OF TEXAS
AUTHORITY TO CHANGE RATES	§	

EAST TEXAS SALT WATER DISPOSAL COMPANY’S INITIAL BRIEF

COMES NOW, East Texas Salt Water Disposal Company (“ETSWD”), and files this Initial Brief regarding Southwestern Electric Power Company’s (“SWEPCO”) rate increase application.

SWEPCO’s proposed rate increases come following a string of other rate and fuel increases filed by the utility in recent years. Only three years ago in Docket No. 46449, the Commission approved \$50,001,133 in new Texas retail revenues for SWEPCO,¹ causing a net increase in Oilfield Service non-fuel rates of 42.55%.² In this latest round, SWEPCO now asks for an additional net increase of approximately \$90,199,736 or 26.04% over its current non-fuel revenue requirement.³ The cumulative impact of these two rate filings would increase Oilfield Service non-fuel rates by more than 69.85% in three years.⁴

Given the magnitude of the proposed increases in rates, the Commission should take particular efforts to carefully follow cost causation principles in the assignment of transmission costs attributable to behind-the-meter generation and to use the most current and accurate usage data by customer class in light of the warping effects caused by the COVID-19 pandemic on customer use. The data related to customer class cost of service in the SWEPCO application with a historic test year ending in March 2020, by SWEPCO’s own admission, are stale and materially

¹ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing (Mar. 19, 2018) at 1.

² *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Updated Commission Number Run (Dec. 22, 2017).

³ SWEPCO Ex. 1 (2020 SWEPCO Rate Filing Package) at 11. The 2020 SWEPCO Rate Filing Package is referred to as the “Application” hereinafter.

⁴ See Cross-Rebuttal Testimony of Kit Pevoto, ETSWD Ex. 2 at 16.

incorrect due to the shift in usage patterns from commercial and industrial to residential caused by COVID-19 and the actions taken to combat the virus.⁵ No party's filed testimony actually addressed ETSWD's primary recommendation to fully update the class cost of service study to incorporate the latest data describing these shifts, and the Commission should accept the request in the interest of fairness and accuracy. These updates are vital to the calculation of just and reasonable rates.

V. Billing Determinants [PO Issue 4, 5, 6, 54]

A. Because COVID-19 Has Materially Altered Electricity Consumption By and Among Customer Classes, SWEPCO Should Be Required to Update Its Billing Determinants Before Any New Rates are Imposed on Consumers.

By SWEPCO's own description, SWEPCO's Application in this Docket does not account for the effects of COVID-19 on usage, *i.e.*, billing determinants, among customer classes.⁶ Specifically, SWEPCO analyzed its billing determinants through December 31, 2020 and reported that as compared to SWEPCO's filed class cost of service study, total annualized normalized sales were down by 3.1%, commercial was down 4.3% and industrial by 6.9%.⁷ The goal of approving cost allocation and rate design is to describe as closely as possible the conditions that will prevail when the rates are in place. SWEPCO's class cost of service study ignores all but the first week of the single most disruptive event to hit the country's economic patterns in at least one hundred years.⁸ Rates approved in this proceeding should not knowingly rely on antiquated data and an obsolete view of the world. In cross-examination, SWEPCO witness Mr. Burnett testified to two critical facts: (1) SWEPCO has much more current information about loads among customer classes that it has not included in the record to date and (2) data in SWEPCO's possession quantifies differences in current usage patterns among the classes.⁹ SWEPCO concedes that whether looking at the data that it provided in discovery in this proceeding or at the updated data

⁵ See Direct Testimony of Kit Pevoto, ETSWD Ex. 1 at KP-3 (Pevoto Dir.).

⁶ See ETSWD Ex. 1, Pevoto Dir. at KP-2.

⁷ ETSWD Ex. 1, Pevoto Dir. at KP-3.

⁸ Tr. at 1472: 13-14 (Cross-examination Burnett Rebuttal).

⁹ Tr. at 1496: 20 - 1497: 1 (Cross-examination Burnett Rebuttal).

that it now possesses internally, the assumptions about usage across customer classes utilized in the original Application are antiquated.¹⁰

ETSWD consistently has recommended that SWEPCO update its customer class cost of service studies to incorporate new data in order to better account for the enduring “work from home” shift and other effects of COVID-19.¹¹ At hearing, SWEPCO testified to possessing data as recent as April 2021.¹² Commission Staff witness Mr. Narvaez rightly noted at hearing that, if the Commission ordered SWEPCO to update its cost allocation study using new information, it would include all of the attendant impacts and all the different impacts on billing determinants and would constitute a known and measurable adjustment.¹³ Alternatively, SWEPCO should be instructed to make known and measurable adjustments consistent with the SWEPCO data that is already in the record showing significant changes in usage across customer classes since COVID-19.¹⁴ “The Commission has the authority to incorporate known and measurable changes to test year data at its discretion.”¹⁵ While utilizing the data underlying SWEPCO’s response to request for information (“RFI”) ETSWD 3-1 offers a second best option to updating the customer class usage calculations with actual, available current information, it at least offers a more accurate reflection of the post-pandemic environment than the original Application, which, excepting one week out of the test year, relied on data from a time before COVID-19 existed. “The Commission may, in its discretion, go outside the test year when necessary to achieve just and reasonable rates

¹⁰ *Id.* (related to new data in SWEPCO’s possession); Tr. at 1491: 15-18 (Cross-examination Burnett Rebuttal) (SWEPCO’s response to ETSWD 3-1, which is ETSWD Ex. 1 at KP-2, represents the most current information on customer usage by revenue class currently in the record of this Docket).

¹¹ *See, e.g.*, ETSWD Ex. 1, Pevoto Dir. at 5. Of note, it appears after cross-examination that the Commission Staff and Office of Public Utility Counsel (“OPUC”) witnesses in their cross-rebuttal testimony did not respond to ETSWD’s primary recommendation that the Commission require that SWEPCO fully update its class cost of service study. *See, e.g.*, Tr. at 1408: 17-23 (Cross-examination Narvaez Cross-rebuttal).

¹² Tr. at 1474: 1-3 (Cross-examination Burnett Rebuttal).

¹³ Tr. at 1408: 17-23 (Cross-examination Narvaez Cross-rebuttal).

¹⁴ *See* 16 Tex. Admin. Code (TAC) §25.231(a) (“rates are to be based upon an electric utility’s cost of rendering service to the public during a historical test year, adjusted for known and measurable changes.”). *Cf. Entergy Texas, Inc v. Public Util Comm’n*, 490 S.W.3d 224, 232 (Tex. App.-Austin 2016) (affirming a Commission decision to deny known and measurable changes that relied on uncertain forecasts of future costs).

¹⁵ *Office of Public Utility Counsel v Pub Util Comm’n of Tex.*, 185 S.W. 3d 555, 566 fn. 14 (Tex. App.-Austin 2006, pet. denied) (citing *Central Power & Light Co v Public Util Comm’n*, 36 S.W.3d 547, 563 (Tex. App.-Austin 2000, pet. denied) (internal citations omitted)).

that will *more accurately reflect the cost of service* that is apt to apply to the utility in the future.”¹⁶ While SWEPCO, Staff, and OPUC witnesses have asked that the Commission ignore this more current data, no one has challenged the accuracy of SWEPCO’s data it reported in its response to ETSWD 3-1;¹⁷ it is uncontroverted. Instead, they ask the Commission to speculate that the data represents nothing more than a blip, but offer no tangible evidence or analysis to support this prognostication. And even these witnesses acknowledged under cross-examination that COVID-19 continues to impact economic and usage patterns in ways not incorporated into SWEPCO’s test year study.¹⁸

B. Representations That the “Work from Home” Economy Will Cease and Will Entirely Revert to Pre-COVID Behavior Lack Evidence and are Wholly Contradicted by SWEPCO’s Own Data.

Actual events and data illustrate that assertions that the COVID-19 economy has reverted to pre-COVID levels are unfounded. Staff, OPUC, and SWEPCO witnesses in written testimony contended that electricity usage among customer classes will not differ from historic norms following Governor Abbott’s March 2 order to lift state-level restrictions on businesses.¹⁹ None of these witnesses offered any analysis to support their contentions but offered the claim simply as a *fait accompli*, though Staff witness Mr. Narvaez agrees with ETSWD that SWEPCO’s response to ETSWD 3-1 illustrates the fact that loads have shifted among customer classes since the end of the test year in the Application.²⁰ In direct contradiction to its testimony in this Docket alleging all is returning to pre-COVID norms, as recently as mid-May 2021, SWEPCO’s corporate Twitter account gave advice to customers who are “still working from home.”²¹ Similarly, American Electric Power’s (“AEP’s”) website²² reports to the general public that AEP maximizes

¹⁶ *Southwestern Public Service Co. v. Pub. Util. Comm’n of Tex.*, No. 07-17-00146-CV (Tex. App.-Amarillo 2018) (emphasis added) (citing *City of El Paso v. Pub. Util. Comm’n of Tex.*, 883 S.W.2d 179, 188 (Tex. 1994)).

¹⁷ Staff witness Mr. Narvaez contends that SWEPCO’s data will need to be disaggregated before it could be applied for purposes of making known and measurable changes. Cross-Rebuttal Testimony of Adrian Narvaez, Staff Ex. 4b at 7. ETSWD does not disagree with Staff that disaggregation would be appropriate.

¹⁸ See, e.g., Tr. at 1409-10 (Cross-examination of Narvaez).

¹⁹ Cross-Rebuttal Testimony of Tony M. Georgis, OPUC Ex. 60 at 5.

²⁰ Tr. at 1412: 7-14 (Cross-examination Narvaez Cross-rebuttal).

²¹ ETSWD Ex. 3 (SWEPCO Twitter); Tr. at 1478: 3-22 (Cross-examination Burnett Rebuttal).

²² SWEPCO is a subsidiary of American Electric Power. See Tr. at 1479: 20-23.

the use of work from home itself.²³ SWEPCO's, Staff's, and OPUC's belief that any COVID-related effects on electricity usage by class will simply disappear lacks statistical support and is contradicted by multiple forms of information both in the record and in SWEPCO's possession.

If the Governor's March 2 order did, in fact, mark the return to pre-COVID electricity consumption behaviors as implied by SWEPCO witness Mr. Burnett²⁴ and OPUC witness Mr. Georgis,²⁵ then updated data in SWEPCO's possession would prove that shift in usage among customer classes and a return to "normalcy." This is not an effective argument against updating the data. An updated run of the analyses is not likely to show a return to normalcy. ETSWD has challenged SWEPCO's class cost of service study, which requires SWEPCO to provide evidence sufficient to overcome the challenge and carry its burden of proof. Far from meeting this burden, however, new record data from SWEPCO²⁶ and statements reveal even more recent data in SWEPCO's possession that continues to show that a return to pre-COVID electricity consumption behaviors among classes has not occurred.²⁷ Pursuant to Section 36.006 of the Public Utility Regulatory Act ("PURA"),²⁸ SWEPCO has the burden of proving that its proposed rates are just and reasonable. Given the existence of new data in SWEPCO's possession that shows the material contrast between current customer class usage patterns and that included in the Application, SWEPCO cannot meet its burden of proving its proposed rates are just and reasonable. This underscores ETSWD's call for an updated analysis of the customer class cost of service and billing determinants using current data as part of computing just and reasonable rates that the Commission can approve pursuant to PURA.

In contrast to *Entergy Texas, Inc v. Public Util. Comm'n*,²⁹ where the Commission opposed inclusion of uncertain and speculative forecasts of future costs as "known and measurable," ETSWD asks the Commission to: (1) instruct SWEPCO to provide *current, certain, and actual data* regarding customer class usage and to adjust the customer class of service and billing

²³ ETSWD Ex. 4 (AEP Webpage).

²⁴ Rebuttal Testimony of Chad M. Burnett, SWEPCO Ex. 53 at 7.

²⁵ Cross-Rebuttal Testimony of Tony M. Georgis, OPUC Ex. 60 at 5-6.

²⁶ ETSWD Ex. 1, Pevoto Dir. at KP-3.

²⁷ Tr. at 1496: 20 - 1497: 1 (Cross-examination Burnett Rebuttal).

²⁸ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 11.001-66.016 (West 2007 & Supp. 2014) (PURA).

²⁹ 490 S.W.3d at 232.

determinants based on that *current, certain, and actual data*; or, (2) in the alternative, instruct SWEPCO to recalculate and adjust its customer class of service studies using the data underlying SWEPCO's response to RFI ETSWD 3-1³⁰ because, for the time being, it is the most current information regarding changes in customer usage by customer class in the record.³¹ Staff witness Mr. Narvaez seems to agree that data that reflects conditions apt to prevail in the future should be used,³² though his testimony seems to incorrectly assume that the burden of proving such sits on parties other than the utility.³³ Mr. Narvaez also rightly notes that changes in allocation data among classes should occur at the same time as corresponding updates to billing determinants, consistent with the Commission's actions in Docket No. 40443.³⁴

While Staff's, OPUC's, and SWEPCO's speculations about a return to pre-COVID work from home behaviors and a pre-COVID economy would not require a known and measurable change, the *Entergy* case shows the Commission's unwillingness to rely on unsubstantiated and unquantified forecasts of the future in setting rates.³⁵ OPUC witness Mr. Georgis testified that his opposition to the known and measurable changes flowed from his disagreement with the likely outcome of rerunning the calculations.³⁶ But the Commission's decisions in setting rates should

³⁰ RFI ETSWD 3-1 is attached to ETSWD Ex. 1, Pevoto Dir. at KP-3.

³¹ Tr. at 1475: 6-13 (Cross-examination Burnett Rebuttal).

³² See Cross-Rebuttal Testimony of Adrian Narvaez, Staff Ex. 4b at 8.

³³ PURA § 36.006 ("In a proceeding involving a proposed rate change, *the electric utility has the burden of proving* that: (1) the rate change is just and reasonable, if the utility proposes the change; or (2) an existing rate is just and reasonable, if the proposal is to reduce the rate.") (emphasis added).

³⁴ See Cross-Rebuttal Testimony of Adrian Narvaez, Staff Ex. 4b at 9. See *Application of Southwestern Electric Power Company for Authority to Change Rates and Reconcile Fuel Costs*, Docket No. 40443, Final Order (Oct. 10, 2013).

³⁵ 490 S.W.3d at 232 (the Commission rejected the inclusion of cost data that was fraught with uncertainty and significant variability). See *Rizkallah v. Conner*, 952 S.W.2d 580, 587 (Tex. App.—Houston [1st Dist.] 1997). (in the context of civil litigation pointing out, "Conclusory statements without factual support are not credible and are not susceptible to being readily controverted.").

³⁶ Cross-Rebuttal Testimony of Tony M. Georgis, OPUC Ex. 60 at 4 (anticipating that updated data would prove the increased burden placed on the system by residential customers and the reduced burden placed by commercial and industrial customers).

Mr. Georgis also tries to compare the use of a brief test year with known and measurable changes in this Docket to the long-term forecasting used in Docket No. 50277 for a Certificate of Convenience and Necessity ("CCN") proceeding to suggest a precedent for the treatment of COVID-19's effects on usage. OPUC Ex. 60 at 6. The periods for evaluation in a rate case's historic test year and a CCN differ by decades and here ETSWD asks for the use of actual data, not forecasts; so, the comparison is inapplicable. Likewise, this comparison ignores the applicability of PURA § 36.006 to this Docket and its inapplicability to a CCN docket. Cf. 952 S.W.2d at 587 ("Statements of legal conclusions amount to little more than the witness choosing sides on the outcome of the case").

not be driven by a preferred outcome but rather by the data that best describes the economic environment when these rates go into effect. Hard and undisputed data shows that the customer class usage data relied upon in the original Application fails to resemble the current world. As such, ETSWD urges the Commission, consistent with 16 Tex. Admin. Code §25.231(a), to require the use of the most up-to-date known and measurable data possible in the calculation of SWEPCO's customer class of service studies in this Docket.

Finally, ETSWD notes that, at the very least, no party appears to contest Ms. Pevoto's request to update the class cost of service study for known and measurable changes related to closures that have occurred but were not included in SWEPCO's original study.³⁷ Of course, to the extent the Commission agrees that SWEPCO should update its study to take into account the significant changes to usage patterns due to COVID-19, this last adjustment would be unnecessary.

VI. Functionalization and Cost Allocation [PO Issues 4, 5, 52, 53, 55, 56, 57, 58]

A. Jurisdictional Allocation [PO Issues 55, 57]

ETSWD generally does not take exception to the jurisdictional allocations applied by SWEPCO in its Application. Southwest Power Pool ("SPP") transmission charges assessed to SWEPCO for service to customers with behind-the-meter generation raise certain questions about the amount of SPP-charged transmission costs that should be assigned to SWEPCO's Texas retail customers and, more specifically, to SWEPCO's Texas retail customers with behind-the-meter generation on site.³⁸ ETSWD does not take a position on how the SPP open access transmission tariff ("OATT") should be read in the context of behind-the-meter generation but strongly opposes any proposal that would shift these SPP OATT costs associated with behind-the-meter generation customers in the industrial class to any other Texas Retail customer class, including the Oilfield Services class.³⁹

³⁷ ETSWD Ex. 1, Pevoto Dir. at KP-4.

³⁸ See generally Direct Testimony & Exhibits of Ali Al-Jabir, Eastman Ex. 1; Direct Testimony and Exhibits of Jeffry C. Pollock, TIEC Ex. 1.

³⁹ See Cross-Rebuttal Testimony of Kit Pevoto, ETSWD Ex. 2 at 20-21. See also, 16 TAC §25.234(a) ("Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost.").

B. Class Allocation [PO Issues 53, 58]

ETSWD agrees with how SWEPCO proposes to allocate costs among Texas Retail classes,⁴⁰ but as noted above, ETSWD believes that the customer usage among the classes and billing determinants need to be refreshed to provide a more accurate indication of current usage profiles instead of the antiquated pre-COVID data from almost two years ago that now underlies the SWEPCO Application.

Despite fundamental changes in how and where retail customers use electricity since the appearance of COVID-19 in early 2020, SWEPCO has objected to updating its customer class usage data to assess the effects of work from home policies, closed businesses, and other ripple effects from COVID-19.⁴¹ This objection to updates comes despite SWEPCO itself possessing data showing the obsolescence of the pre-COVID data and despite the data that it provided in discovery in this proceeding. Consistent with the discussion in Section V above, ETSWD asserts that just and reasonable rates, as required by PURA, cannot be computed without the use of updated data for the calculation of customer class cost of service studies and for updated billing determinants.

VII. Revenue Distribution and Rate Design [PO Issues 4, 5, 47, 48, 52, 59, 60, 61, 62, 75, 76, 77, 78, 79]

A. Rate Moderation / Gradualism [PO Issue 52]

ETSWD generally agrees with gradualism as a desirable public policy,⁴² but notes that gradualism should relate to the whole of a customer's bill, not a single line item, and that considerations of gradualism should apply for all customer classes, not just small commercial and residential. Similarly, the Commission historically has considered rate moderation in the context of the *whole* electricity bill, not a single line item on a bill. For example, Staff witness Mr. Narvaez

⁴⁰ See ETSWD Ex. 1 at 18-19 (Pevoto Dir.).

⁴¹ Rebuttal Testimony of Chad M. Burnett, SWEPCO Ex. 53 at 6. This refusal to update the class cost of service comes as SWEPCO has agreed to make other updates and to rerun the class cost of service study to incorporate those improvements. See Rebuttal Testimony of John Aaron, SWEPCO Ex. 54 at 5 ("A rebuttal Texas jurisdictional and class cost-of-service study, included with my rebuttal workpapers, was prepared to reflect changes to certain costs allocated to the Texas retail jurisdiction and to reflect allocation changes among SWEPCO's Texas retail classes, based on SWEPCO's response to discovery requests and review of Intervenor testimonies.").

⁴² See, e.g., ETSWD Ex. 1 at 18 (Pevoto Dir.).

referenced the moderation efforts employed in SWEPCO's most recent rate case in his testimony.⁴³ Those efforts related to total bills and not line items like transmission cost assignment in isolation. In Docket No. 46449, "[t]he Commission conclude[d] that any gradualism methodology should evaluate the differences in the actual rates that customers pay."⁴⁴ SWEPCO's Application generally has done well in promoting rate moderation and gradualism.⁴⁵ Subject to the data updates described in this Initial Brief, ETSWD asks the Commission to apply the gradualism methodologies employed by SWEPCO in its Application and as modified by SWEPCO's Ms. Jackson on rebuttal.⁴⁶

Gradualism certainly does not provide a reasonable basis for Texas Industrial Energy Consumers ("TIEC") witness Mr. Pollock's proposal to shift more than 90% of the SPP OATT-related transmission charges resulting from Large Lighting and Power customer sites with behind-the-meter generation to SWEPCO customers without such onsite generation and who did not cause those OATT charges to be incurred.⁴⁷ First, such an extreme cost shifting ignores cost causation principles almost entirely as nearly all of the transmission costs associated with behind-the-meter generation would be shifted onto customers without behind-the-meter generation. Even Eastman Chemical Company ("Eastman") witness Mr. Al-Jabir acknowledged that customers without behind-the-meter generation should not be charged the transmission costs associated with the behind-the-meter generation customers.⁴⁸ Moreover, justifying the subsidy of behind-the-meter generation customers on gradualism grounds does not properly examine the whole bill charged these customers, and instead looks only at a single line item in isolation. As such, gradualism fails to provide an adequate basis for the large-scale shift of transmission costs away from behind-the-meter generation customers and onto other customers who have had nothing to do with the issue.

⁴³ See Direct Testimony of Adrian Narvaez, Staff Ex. 4 at 23-24.

⁴⁴ *Application of Southwestern Electric Power Company for Authority to Change Rates*, Docket No. 46449, Order on Rehearing (Mar. 19, 2018) at 8.

⁴⁵ ETSWD Ex. 1 at 5 (Pevoto Dir.).

⁴⁶ Rebuttal Testimony of Jennifer L. Jackson, SWEPCO Ex. 55 at 9.

⁴⁷ Tr. at 1350: 22 – 1351: 1 (Cross-examination Pollock Direct).

⁴⁸ Tr. at 1331: 17 – 1332: 9 (Cross-examination Al-Jabir Direct).

B. Rate Design and Tariff Changes [PO Issues 60, 61, 62]

ETSWD does not oppose most of the rate design and tariff changes that SWEPCO proposes. However, SWEPCO's proposal to establish a cost deferral and recovery mechanism (*i.e.*, the ATC tracker) to recover ongoing SPP OATT costs after base rates are set in this Docket violates Commission Rules and constitutes an impermissible form of retroactive ratemaking.⁴⁹ "SWEPCO proposes that the portion of its ongoing SPP OATT charges that is above or below the net Test Year level approved for recovery by the Commission, be deferred into a regulatory asset or liability until they can be addressed in a future Transmission Cost Recovery Factor (TCRF) or base-rate proceeding."⁵⁰ Commission Staff and TIEC similarly oppose the SWEPCO cost deferral and recovery mechanism. TIEC witness Mr. Pollock rightly noted⁵¹ and SWEPCO witness Mr. Brice conceded⁵² that the SWEPCO ATC tracker proposal is unprecedented. Further, Staff witness Mr. Narvaez aptly distinguished the guaranteed dollar for dollar recovery (and resulting risk shifting) implicit in the proposed ATC tracker from the long-established TCRF methodology codified in Commission Rules.⁵³ The Commission-approved TCRF mechanism creates an environment in which the utility has the opportunity but not the guarantee of a return.⁵⁴ Because of the risk-shifting nature of the proposed ATC tracker and its failure to adhere to the regulatory regime set forth by 16 TAC §25.239, the ATC tracker should be rejected.

C. Transmission Rate for Retail Behind-the-Meter Generation

Transmission charges associated with SWEPCO customer's with behind-the-meter generation should not be assigned to retail customers with no relationship to the behind-the-meter generation. Eastman witness Mr. Al-Jabir seems to agree that it would be unreasonable for rates to be set such that OATT costs related to behind-the-meter generation are recovered by customers

⁴⁹ See ETSWD Ex. 1, Pevoto Dir. at 22-23.

⁵⁰ Direct Testimony of Thomas P. Brice, SWEPCO Ex. 4 at 12-13.

⁵¹ See Direct Testimony and Exhibits of Jeffry Pollock, TIEC Ex. 1 at 14.

⁵² See Rebuttal Testimony of Thomas P. Brice, SWEPCO Ex. 33 at 4.

⁵³ See Direct Testimony of Adrian Narvaez, Staff Ex. 4 at 9.

⁵⁴ See ETSWD Ex. 1, Pevoto Dir. at 23.

that do not even possess such onsite generation.⁵⁵ Mr. Al-Jabir acknowledged that such a plan would be devoid of any basis in cost causation principles.⁵⁶ Similarly, TIEC witness Mr. Pollock agreed that cost causation principles should be applied to SWEPCO's retail rates.⁵⁷ Consistent with this lack of cost causation relationship, ETSWD urges the Commission not to assign any behind-the-meter transmission charges to customers outside of the industrial class without onsite generation.⁵⁸

XI. Conclusion

Whereas, premises considered, ETSWD hereby recommends that the Commission approve SWEPCO's Application in accordance with the modifications described herein. SWEPCO has not demonstrated that it is utilizing properly updated customer class usage data to address the quantifiable effects of COVID-19 in shifting usage away from commercial and industrial classes and toward the residential class. Additionally, consistent with basic cost causation principles, the Commission should not assign any transmission costs attributable to industrial customers with behind-the-meter-generation to customers outside of the class that do not possess behind-the-meter-generation themselves. Lastly, the ATC tracker conflicts with existing Commission Rules and basic principles against retroactive ratemaking and therefore should be denied.

Respectfully submitted,

/s/ Todd F. Kimbrough
Todd F. Kimbrough
Texas Bar No. 24050878
BALCH & BINGHAM LLP
811 Louisiana Street
Suite 1010
Houston, TX 77002
Telephone: (713) 362-2554

⁵⁵ Tr. at 1331: 17 – 1332: 9 (Cross-examination Al-Jabir Direct).

⁵⁶ Tr. at 1331: 17 – 1332: 9 (Cross-examination Al-Jabir Direct).

⁵⁷ Tr. at 1440: 16-21 (Cross-examination Pollock Direct).

⁵⁸ See Cross-Rebuttal Testimony of Kit Pevoto, ETSWD Ex. 2 at 20-21. See also, 16 TAC §25.234(a) ("Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, and shall be based on cost.").

Fax: (866) 258-8980
Email: tkimbrough@balch.com

Dane McKaughan
Texas Bar No. 24007651
HOLLAND & KNIGHT, LLP
111 Congress Ave. Suite 540
Austin, Texas 78701
Telephone: (512) 954-6528
Fax: (512) 472-7473
Email: dane.mckaughan@hklaw.com

ATTORNEYS FOR EAST TEXAS SALT
WATER DISPOSAL COMPANY

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this document was served by email, facsimile, hand-delivery, overnight delivery, or 1st Class U.S. Mail on all parties of record in this proceeding on June 17, 2021.

/s/ Todd F. Kimbrough